

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**  
I. D. 5152  
**ENERGY DIVISION**

**RESOLUTION E-3961**  
**December 15, 2005**

**R E S O L U T I O N**

Resolution E-3961. Pacific Gas and Electric Company request for approval of the Termination and Settlement Agreement ("Agreement"), as reasonable, which terminates the amended Power Purchase Agreement ("PPA") between PG&E and TIN Inc. ("TIN") and settles a dispute between PG&E and TIN regarding PG&E's de-rating of the firm capacity level in the PPA due to TIN's deliveries in June 2004 (the "claims"). Approved.

By Advice Letter (AL) 2715-E Filed on September 22, 2005.

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**SUMMARY**

This Resolution approves the Agreement (Confidential Appendix A to AL 2715-E, Termination and Settlement Agreement) that terminates the PPA between PG&E and TIN (Confidential Appendix B to AL 2715-E, Termination and Settlement Agreement) and also settles a dispute between PG&E and TIN regarding PG&E's de-rating of the firm capacity level in the PPA due to TIN's deliveries in June 2004.

Specifically, PG&E requests that the Commission adopt a resolution that:

1. Approves the Agreement as reasonable; and
2. Authorizes the recovery of \$ [REDACTED] as a shareholder incentive associated with this PPA restructuring, as authorized by the Commission in D.95-12-063 as modified by D.96-01-009.

The Agreement is contingent on receipt of a CPUC resolution acceptable to both parties no later than January 31, 2006. The CPUC approves the Agreement as

proposed at the December 15, 2005 Commission meeting to let ratepayers receive savings as compared to the operation of the Facility under the PPA.

## **BACKGROUND**

### **The Commission encouraged QF contract restructuring and implementation through an expedited advice letter process**

The Commission sought to encourage QF contract restructuring in its Preferred Policy Decision, D.95-12-063, as modified by D.96-01-009, by proposing an incentive mechanism to encourage the restructuring of QF contracts so that total transition costs might be reduced. Specifically, shareholders would be allowed to retain 10% of the net ratepayer benefits resulting from a renegotiation:

“We endorse an approach that involves both a monetary incentive to shareholders and conditions which foster voluntary, nondiscriminatory negotiations. We will allow shareholders to retain 10% of the net ratepayer benefits resulting from a renegotiation, which will be reflected by an adjustment to the transition cost total.” (D.95-12-063, p.132)

In D.96-12-088 (the Roadmap 2 Decision), the Commission stated its interest in "establishing a generic and possibly expedited process by which we can assess the reasonableness of contract restructuring in a manner which respects the principles outlined in our Preferred Policy Decision" (D.96-12-088, p.79-80).

In 1998, the Commission adopted the Restructuring Advice Letter Filing (RALF)<sup>1</sup> process in D.98-12-066:

"The restructuring Advice Letter [filing] process attached as Attachment B to this decision, shall be adopted subject to the modifications and clarifications set forth in Section 7 of this decision." (D.98-12-066, Ordering Paragraph 1).

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<sup>1</sup> Restructuring Advice Letter Filing ("RALF") Procedure For Review of QF Contract Restructurings.

**The Restructuring Advice Letter Filing (RALF) requirements include a statement of support or neutrality from ORA of the QF contract restructuring advice letter and Energy Division review and resolution of the advice letter.**

The Commission adopted the RALF process with modifications that were not included in Attachment B to D.98-12-066 but were instead set forth in the decision. The RALF reflect the following determinations made in D.98-12-066:

- "We will require that a statement of support or neutrality from ORA be attached to any restructuring Advice Letter filing. We will not limit the use of the restructuring Advice Letter in any other way, such as by dollar size or by type of QF (including affiliates of utilities). (D.98-12-066, p.27, and Conclusion of Law 9)
- "While an ORA statement must be included with the restructuring Advice Letter, any other party may file a protest to the Advice Letter in the proper timeframe. We believe the procedural safeguards set forth in Attachment B, as modified by the following discussion, will ensure fairness in addressing the protests. Energy Division will review such protests (and any responses), and prepare a Resolution for the Commission pursuant to Section 9 of Attachment B [to D.98-12-066]. However, we modify Section 9 so that Energy Division, at its discretion, may advise the utility that the matter is too complex and should be filed as an Application. Energy Division may also advise the utility to file an Application even if there are no protests, should the Division determine that there are complexities to the filing that the Division does not believe it is in the best position to resolve. The Energy Division should discuss any such recommendation with the Coordinating Commissioner for QF matters before advising the utility to file an Application." (D.98-12-066, p.17)
- "We do not adopt Section 4 in Attachment B addressing confidentiality. Confidentiality issues shall be consistent with the current practice for utility Advice Letters." (D.98-12-066, p.28).

In addition, Section 3 of RALF procedure lists the information that the utility needs to provide in its restructuring advice letter. It states:

"3. The restructuring advice letter shall contain the following categories of information, including all relevant work papers and other relevant supporting documents:

- a. Identification of the QF, location of the QF's generating facility, brief description of the generating facility size, type of technology and other pertinent or unique characteristics.
- b. Ownership of the QF project and related companies, including affiliate relationships of the parties involved in the transaction, if any.
- c. A detailed description of the historical operational performance of the project, including historical production and compliance with performance and efficiency monitoring standards.
- d. A summary of the proposed contract restructuring.
- e. A summary of the ratepayer benefits.
- f. A description of any significant, pending legal or regulatory disputes between the Utility and the QF, and their resolution or status.
- g. An assessment of the QF's projected economic and operational viability under the existing contract.
- h. A detailed description of ratepayer benefits, shareholder incentive, and sensitivity analyses.
- i. A copy of the QF's existing contract, including any amendments.
- j. A copy of the executed or unexecuted restructured agreement for which approval is sought and copies of all related agreements between the QF and the Utility.

### **The Agreement between PG&E and TIN to terminate the PPA.**

On [REDACTED], PG&E entered into a 30-year PPA with TIN's predecessor, Crown Zellerbach Corporation. The PPA required PG&E to purchase energy and capacity generated by a 49,670 kilowatt (kW) natural gas-fueled cogeneration facility located at 2301 Wilbur Avenue in the City of Antioch, California (the "Facility"), identified as PG&E log No. 01C104. The Facility's initial energy delivery date and firm capacity availability date under the PPA was [REDACTED]. The PPA expires [REDACTED].

The Facility is a combined cycle cogeneration plant consisting of one combustion turbine generator (CTG), one heat recovery steam generator (HRSG), and one steam turbine generator. Additional support equipment includes: water treatment facilities with associated chemical and water storage tanks, turbine exhaust steam condenser, deaerator, electrical equipment, a central control room, maintenance facilities, main office facilities, and other plant equipment. The Facility was constructed to provide power and steam to a nearby paper container production mill and to sell excess power to PG&E. The mill served as the steam

host for the Facility. In 2002, the mill shut down and the Facility lost its steam host.

The Project's historical generation prior to losing the steam host ranged from [REDACTED] gigawatt-hours (GWh) to [REDACTED] GWh per year (including six months of reduced generation during the energy crisis). The average generation from 1996 through 2002 was [REDACTED] GWh. Historical deliveries are provided in Confidential Appendix F of the AL 2715-E. Absent the ~[REDACTED] mega-watt (MW) load of the paper mill, forecasted annual generation is expected to increase to [REDACTED] GWh and assumes installation of a water distillation facility sufficient to meet QF efficiency standards.

Prior to losing the steam host, the Facility delivered its firm capacity to PG&E pursuant to the PPA terms. It [REDACTED]  
A dispute arose after the firm capacity was derated by [REDACTED] MW following a forced outage in June 2004. [REDACTED]

[REDACTED] However, the PPA prices are above market and avoiding these payments provides benefits to PG&E' ratepayers.

TIN Inc. is successor to Gaylord Container Corporation and a subsidiary of Temple Inland Corporation.

PG&E Corporation and its affiliate, Pacific Gas and Electric Company, are not and have never been affiliated in any way with any of the foregoing companies.

### **Summary of the Termination and Settlement Agreement**

Because the QF agreed to provide firm capacity [REDACTED], early termination of the PPA requires repayment of approximately [REDACTED] in prior capacity

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<sup>2</sup> Based on information provided to the Energy Division, the facility lost its QF status in 2002 after losing its steam host and did not operate November 2002 through mid-year 2004. The QF filed at the Federal Energy Regulatory Commission (FERC) and was subsequently granted a waiver for operating and efficiency standards for 2003 and 2004.

overpayments (including interest) since the QF has not met its contractual requirement to provide capacity for 30 years.

### **Terms of the Termination and Settlement Agreement**

The parties agree to terminate TIN's PPA in exchange for a one-time payment by TIN to PG&E of [REDACTED]

[REDACTED]. The Agreement settles the Claims regarding the operation of the Facility in [REDACTED].

The Agreement also preserves PG&E's right [REDACTED]

TIN waives the right to sell power to PG&E under PURPA from the Facility or any subsequent facility built on the same parcel of land. TIN can participate in non-PURPA, market based sales to PG&E. Therefore, under the Agreement, PG&E's ratepayers will not be exposed to future above-market prices for generation sold by TIN.

Either party may terminate the Agreement if, among other things, final and unappealable Commission approval has not been obtained by January 31, 2006.

### **PG&E's Analysis on Ratepayers benefits and Shareholders Incentives**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PG&E's calculation is included in the Confidential Appendix G of the AL 2715-E.

PG&E initially requested [REDACTED] of the net ratepayer benefits resulting from the termination of the PPA. However, based on ORA's sensitivity analysis PG&E modified its request to [REDACTED].

In addition, as required by Section 3 of RALF procedure, PG&E has performed an operational viability study (Confidential Appendix E of AL 2715-E) and an economic viability study (Confidential Appendix H of AL 2715-E). [REDACTED]

[REDACTED]

Based on its viability assessment, PG&E would expect the plant to operate in a base load mode and receive capacity and gas-indexed SRAC energy payments averaging about [REDACTED] over the remaining PPA term.

Terminating the PPA would also reduce settlement costs, scheduling uncertainty, and imbalance charges by an unquantifiable amount. Although PG&E believes the Facility to be viable, if it does not operate, the costs and probability of PG&E's collecting minimum damages are uncertain.

Furthermore, on May 18, 2005, PG&E presented details of the proposed transaction to its Procurement Review Group (PRG). PRG Members were generally supportive, or expressed no concerns with the agreement. In Confidential Appendix C of AL 2715-E, PG&E provides the minutes from the May 18, 2005 PRG meeting.

## **NOTICE**

Notice of AL 2715-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

## **PROTESTS**

**No party protested PG&E's AL 2715-E**

Advice Letter AL 2715-E was filed on September 22, 2005. The protest period ended October 12, 2005. No protests were filed.

## **DISCUSSION**

**PG&E has complied with the RALF requirements**

Energy Division has reviewed both the public and confidential versions of PG&E AL 2715-E. PG&E AL 2715-E included information required in Section 3 of the RALF procedure, and PG&E has complied with the other RALF filing requirements.

**Ratepayers will benefit from the contract restructuring**

The Agreement between PG&E and TIN terminates the PPA [REDACTED] and settles the dispute between the two parties. [REDACTED]

[REDACTED] The PPA prices are above market and avoiding these payments provide benefits to PG&E' ratepayers. In addition, it resolves the claims related the operation of the Facility in June 2004.

PG&E has also reserved its [REDACTED]



### **ORA supports the contract restructuring**

The RALF procedure requires a statement of support or neutrality from ORA be attached to any restructuring Advice Letter filing. ORA issued a letter in support of PG&E and TIN Agreement on September 20, 2005. In its letter, ORA states:

"ORA concludes that the proposed Termination and Settlement agreement between PG&E and TIN provides benefits to ratepayers" and that ORA "supports a finding of reasonableness for the proposed restructuring advice letter filing." However, ORA concludes, based on its sensitivity analysis, that expected total ratepayer benefits amount to [REDACTED] million rather than the [REDACTED] calculated by PG&E. Accordingly, ORA "recommends that PG&E receive a 10% incentive reward based on the estimated [REDACTED] million of expected savings."

The difference between ORA's analysis and PG&E's analysis is that ORA used the average actual historical energy deliveries of [REDACTED] GWh from [REDACTED], excluding year 2001 and PG&E used expected annual generation. PG&E in AL 2715-E accepted ORA's recommendation and has requested a 10% incentive reward based on the estimated [REDACTED] million of expected savings.

Based on the review of AL 2715-E, all of its confidential Appendices, and ORA's letter of support, Energy Division concludes that the Agreement between PG&E and TIN will provide benefits to ratepayers.

Energy Division recommends approving the agreement and a 10% incentive reward based on the estimated [REDACTED] million of expected savings.

### **COMMENTS**

Public Utilities Code section 311(g) (1) requires that draft resolutions be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g) (3) provides that this 30-day period may be reduced or waived pursuant to Commission adopted rule.

The 30-day comment period for this resolution has been reduced in accordance with the provisions of Rule 77.7(f) (9). Rule 77.7(f) (9) provides that the

Commission may waive or reduce the comment period for a decision when the Commission determines that public necessity requires reduction or waiver of the 30-day period for public review and comment. For purposes of Rule 77.7(f) (9), “public necessity” refers to circumstances in which the public interest in the Commission’s adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment, and includes circumstances where failure to adopt a decision before expiration of the 30-day review and comment period would cause significant harm to public health or welfare. The public necessity in this case is that the Commission needs to address PG&E’s AL 2715-E so that a decision approving the agreement will become final before January 30, 2006.

In this case, the public necessity requiring a reduction in the comment period outweighs the public interest in having the full 30-day period for review and comment. Thus, pursuant to Rule 77.7(f) (9), we provide for a shortened comment period of 5 days.

## **FINDINGS**

1. The Commission adopted the Restructuring Advice Letter Filing (RALF) process in D.98-12-066.
2. On September 22, 2005, PG&E filed Advice Letter 2715-E pursuant to the RALF process for approval of Agreements between PG&E and TIN (Appendix A to AL 2715-E) that terminates Power Purchase Agreement (PPA) (Appendix B to AL 2715-E) and settle a dispute between PG&E and TIN regarding PG&E’s de-rating of the firm capacity level in the PPA due to TIN’s deliveries in June 2004 (the “claims”).
3. AL 2715-E was not protested.
4. On September 20, 2005, ORA issued a letter in support of the Agreement between PG&E and TIN presented by PG&E in AL 2715-E.
5. PG&E complied with RALF filing requirements.

6. Facility was constructed to provide power and steam to a nearby paper container production mill and to sell excess power to PG&E. The mill served as the steam host for the Facility. [REDACTED]

[REDACTED] The parties agree to terminate TIN's PPA in exchange for a one-time payment by TIN to PG&E of [REDACTED]

9. The Agreement settles the Claims regarding the operation of the Facility in [REDACTED].

10. The Agreement also preserves PG&E's [REDACTED]

11. TIN waives the right to sell power to PG&E under PURPA from the Facility or any subsequent facility built on the same parcel of land. TIN can participate in non-PURPA, market based sales to PG&E

12. Under the Agreement, PG&E's ratepayers will not be exposed to future above-market prices for generation sold by TIN.

13. Either party may terminate the Agreement if, among other things, final and unappealable Commission approval has not been obtained by January 31, 2006.

14. The PPA prices are above current market prices, therefore, the termination of the PPA [REDACTED] would result to savings for ratepayers.

15. PG&E calculates ratepayer benefits as the difference between the expected payments avoided in [REDACTED] of the PPA and the cost of replacing the same amount of power at lower market prices.
16. ORA issued a letter in support of PG&E and TIN Agreement on September 20, 2005.
17. We should approve, as reasonable, the Agreement (Appendix A to AL 2715-E) that terminates the Power Purchase Agreement (PPA) (Appendix B to AL 2715-E) and settles a dispute between PG&E and TIN regarding PG&E's de-rating of the firm capacity level in the PPA due to TIN's deliveries in June 2004 (the "claims").
18. PG&E should be allowed to recover the shareholder incentive amount a 10% of the expected savings of [REDACTED], as recommended by ORA.
19. The comment period should be shortened to 5 days.

**THEREFORE IT IS ORDERED THAT:**

1. Pacific Gas and Electric Company's request for approval of the Agreement (Appendix A to AL 2715-E) that terminates the Power Purchase Agreement (PPA) (Appendix B to AL 2715-E) and settles a dispute between PG&E and TIN regarding PG&E's de-rating of the firm capacity level in the PPA due to TIN's deliveries in June 2004 (the "claims") is approved.
2. PG&E may recover the shareholder incentive amount, a 10% of the expected savings of [REDACTED], as recommended by ORA.
3. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 15, 2005; the following Commissioners voting favorably thereon:

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STEVE LARSON  
Executive Director

**Formerly ATTACHMENT B to D.98-12-066**

**Revised Exhibit A**

**RESTRUCTURING ADVICE LETTER FILING ("RALF") PROCEDURE FOR  
REVIEW OF QF CONTRACT RESTRUCTURINGS**

**THIS ATTACHMENT B IS SUBJECT TO THE MODIFICATIONS SET FORTH  
IN SECTION 7 OF D.98-12-066, INCLUDING:**

- "We will require that a statement of support or neutrality from ORA be attached to any restructuring Advice Letter filing. We will not limit the use of the restructuring Advice Letter in any other way, such as by dollar size or by type of QF (including affiliates of utilities). (D.98-12-066, p.27, and Conclusion of Law 9)
- "While an ORA statement must be included with the restructuring Advice Letter, any other party may file a protest to the Advice Letter in the proper timeframe. We believe the procedural safeguards set forth in Attachment B, as modified by the following discussion, will ensure fairness in addressing the protests. Energy Division will review such protests (and any responses), and prepare a Resolution for the Commission pursuant to Section 9 of Attachment B [to D.98-12-066]. However, we modify Section 9 so that Energy Division, at its discretion, may advise the utility that the matter is too complex and should be filed as an Application. Energy Division may also advise the utility to file an Application even if there are no protests, should the Division determine that there are complexities to the filing that the Division does not believe it is in the best position to resolve. The Energy Division should discuss any such recommendation with the Coordinating Commissioner for QF matters before advising the utility to file an Application." (D.98-12-066, p.17)
- "We do not adopt Section 4 in Attachment B addressing confidentiality. Confidentiality issues shall be consistent with the current practice for utility Advice Letters." (D.98-12-066, p.28).

1. The utility will submit a restructuring advice letter to the Commission's Energy Division which will contain the essential information necessary to establish the reasonableness of the proposed voluntarily negotiated QF restructuring. Each such filing, and all protests, responses and replies concerning the filing, shall indicate a postal address and (where appropriate) a FAX number or e-mail address at which the advice letter filer, protestant or respondent, agrees to receive subsequent documents and notices relevant to the advice letter. Each such filing will be reported in the Daily Calendar.

2. Service of the restructuring advice letter shall be as follows:

On or before the date a restructuring advice letter is submitted for filing, and unless otherwise directed by Commission order, the utility shall serve the restructuring advice letter (1) on the Consumer Services Division and the Office of Ratepayer Advocates (service on these parties may be made by Internet); and (2) on the utility's restructuring advice letter service list and any other third parties as specified by the Energy Division, other Commission order, or statute.

The utility's restructuring advice letter service list shall include the postal and e-mail address, as appropriate, of persons on the list. The utility shall include on the requested list any person that requests such inclusion and may periodically confirm the desire of any currently listed person to remain on the list.

After the filing of a restructuring advice letter, and pending its disposition, the utility shall promptly provide a copy of the advice letter to anyone so requesting. Such provision shall be without charge to anyone who is a current customer for utility services from the utility, or to anyone receiving the advice letter by Internet.

3. The restructuring advice letter shall contain the following categories of information, including all relevant work papers and other relevant supporting documents:

- a. Identification of the QF, location of the QF's generating facility, brief description of the generating facility size, type of technology and other pertinent or unique characteristics.
- b. Ownership of the QF project and related companies, including affiliate relationships of the parties involved in the transaction, if any.
- c. A detailed description of the historical operational performance of the project, including historical production and compliance with performance and efficiency monitoring standards.
- d. A summary of the proposed contract restructuring.
- e. A summary of the ratepayer benefits.
- f. A description of any significant, pending legal or regulatory disputes between the Utility and the QF, and their resolution or status.
- g. An assessment of the QF's projected economic and operational viability under the existing contract.
- h. A detailed description of ratepayer benefits, shareholder incentive, and sensitivity analyses.

- i. A copy of the QF's existing contract, including any amendments.
- j. A copy of the executed or unexecuted restructured agreement for which approval is sought and copies of all related agreements between the QF and the Utility.

~~4. The publicly available version of the restructuring advice letter may be redacted to delete the following types of confidential information, which redaction would be approved in advance by the Commission in its orders authorizing the use of the advice letter process:~~

~~a. The schedule of any restructuring payments to be made to the QF, including the total amount thereof.~~

~~b. The Utility's non-public projection of replacement energy and capacity costs.~~

~~c. The Utility's projection of future production by and payments to the QF under the existing contract.~~

~~d. Non-public financial and operating data provided on a confidential basis by the QF to the Utility.~~

~~e. The Utility's assessment of the QF's financial and operating viability under the existing contract.~~

~~f. The Utility's analysis of ratepayer savings under expected, best case and worst case scenarios (except that the projected range of savings under each scenario shall not itself be deemed confidential).~~

~~g. Portions of restructuring agreements that are deemed to be confidential by the parties and which, if made public, would place the Utility and/or the QF at a competitive disadvantage.~~

~~h. Other information which constitutes a protectable trade secret of a party or which, if publicly disclosed, would place the Utility or the QF at a competitive disadvantage.~~  
[Deleted per D.98-12-066, p.18]

5. The restructuring advice letter shall only take effect upon Commission approval.

6. Any person may protest or respond to a restructuring advice letter as follows:

Within 20 days after the date that the advice letter is reported in the Daily Calendar, the protest or response shall be submitted to the Energy Division and served on the same day on the utility filing the restructuring advice letter. After filing a protest, and



pending disposition of the restructuring advice letter, the protestant shall promptly provide a copy of the protest to anyone so requesting.

A restructuring advice letter may be protested on one or more of the following grounds:

- a. The utility did not properly serve or give notice of the restructuring advice letter;
- b. The relief requested in the restructuring advice letter would violate statute or Commission order;
- c. The restructuring advice letter contains material errors, or does not follow the Commission's approved methodology, if any.

In addition, a restructuring advice letter may be protested on the grounds that the proposed restructuring is unjust, unreasonable, or discriminatory, provided, however, that a restructuring advice letter is not subject to protest on these grounds where such protest would require relitigating a prior order of the Commission.

The utility filing the restructuring advice letter shall reply to each protest and may reply to any response. Any such reply shall be submitted to the Energy Division not later than five business days after the last day to serve a protest or response, and shall be served on the same day on the person making the protest or response. If there are multiple protests or responses to a restructuring advice letter, the utility's reply may be to all such protests and responses.

The Energy Division may consider a late-filed protest or response. If the Energy Division considers a late-filed protest or response, it shall notify the utility filing the restructuring advice letter, and the utility shall have five business days from the date of issuance of the notice within which to reply to the late-filed protest or response.

7. The utility filing the restructuring advice letter may make minor revisions or corrections to the filing at any time before the effective date by filing and serving a supplement or substitute sheet. The utility shall withdraw the advice letter without prejudice in order to make major revisions. Supplements, substitute sheets, and withdrawals shall be filed and served in the same manner and on the same persons as was the original advice letter.

Minor revisions do not automatically extend the protest period. The Energy Division on its own motion or at the request of any person, may issue a notice extending the protest period. Any protest during the extended period shall be confined to the substance of the revision.

8. A supplement to a restructuring advice letter may be used to make minor revisions. The following revisions are examples of what commonly, but not necessarily,

qualify as minor: a modification in response to a protest; a language clarification; or a later effective date. The supplement shall bear the same identifying number as the original advice letter but shall have a letter suffix "A" for the first supplement, "B" for the second supplement, etc.

9. Upon completion of the protest, response and reply period, the Energy Division will have 40 days within which to review the proposed restructuring to determine whether the information provided under paragraph 2 above and in response to any protest establishes that the proposed restructuring is reasonable under the Commission's standards and should be approved.

"Energy Division will review such protests (and any responses), and prepare a Resolution for the Commission pursuant to Section 9 of Attachment B. However, we modify Section 9 so that Energy Division, at its discretion, may advise the utility that the matter is too complex and should be filed as an Application. Energy Division may also advise the utility to file an Application even if there are no protests, should the Division determine that there are complexities to the filing that the Division does not believe it is in the best position to resolve. The Energy Division should discuss any such recommendation with the Coordinating Commissioner for QF matters before advising the utility to file an Application."  
(D.98-12-066, p.17)

When such review has been completed, and within such 40-day period, the Energy Division will prepare and submit to the Commission for consideration at the Commission's next public meeting which is at least 10 days thereafter a proposed resolution either approving or rejecting the restructuring advice letter. (To facilitate this process, the utility may submit a proposed form of resolution as part of the advice letter package.) A proposed resolution approving the restructuring advice letter shall make at least the following finding:

- (a) That the restructuring is reasonable;
- (b) That all payments to be made pursuant to the restructuring shall be recovered by the utility through its Annual Transition Cost Proceeding or other mechanism authorized by the Commission, subject only to the utility's prudent administration of the restructuring agreement.

The Commission may then adopt the proposed resolution or modify it in whole or in part. After the Commission has acted on the resolution, its action will be reported in the Daily Calendar and the resolution will be served on the utility filing the restructuring advice letter, the affected QF and on any person filing a protest or response to the restructuring advice letter.

10. Pursuant to Public Utilities Code Sections 1731 to 1736 and Rules 85 to 86.7 of the Commission's Rules of Practice and Procedure, the utility filing the restructuring advice letter, the affected QF, or any person filing a protest to the restructuring advice letter may apply for rehearing of a resolution approving or rejecting the restructuring advice letter pursuant to paragraph 9 above. The application for rehearing shall set forth specifically the grounds on which the applicant considers the resolution to be unlawful. Other than the affected QF, a person filing a response does not have standing to apply for rehearing.

The application for rehearing shall be submitted to the Commission's Docket Office, which will assign a docket number to the application, and with the Energy Division. If the applicant is the utility filing the restructuring advice letter, it shall serve all persons filing protests or responses to the restructuring advice letter. If the applicant is the affected QF or a person filing a protest, the applicant shall serve the utility and all other persons filing protests or responses to the restructuring advice letter.

11. If the Commission's final resolution does not approve the proposed restructuring in its entirety, then the terms of the agreement between the utility and the QF will determine whether or not the restructuring effort will terminate or whether the proposed restructuring will be resubmitted for consideration through a formal application process. Also, subject to its agreement with the QF, the utility will have the right to withdraw a restructuring advice letter without prejudice at any time prior to Commission action on the draft resolution prepared by the Energy Division, or to pursue a formal application process in lieu of the advice letter procedure.

12. Nothing in the restructuring advice letter filing procedure shall preclude the utility from electing not to use the advice letter process.